SERVED: May 18, 1992

NTSB Order No. EA-3566

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 4th day of May, 1992

Petition of DAVID McKNIGHT for review of the denial by the Administrator of the Federal Aviation Administration of an Airman Medical Certificate	)	Docket SM-3902

OPINION AND ORDER

Both petitioner and the Administrator have appealed from the oral initial decision issued by Administrative Law Judge William R. Mullins on October 16, 1991, at the conclusion of an evidentiary hearing.[1] We grant the Administrator's appeal and deny that of petitioner.

In this proceeding, petitioner sought review of the Administrator's decision to deny him a third class airman medical certificate. The denial was based on § 67.17(d)(1)(i)(b) and 67.17(d)(1)(ii) of the Federal Aviation Regulations ("FAR," 14

[1]The initial decision, an excerpt from the transcript, is attached.

C.F.R.).[2] Petitioner was found to have a history of psychosis and a schizotypal personality disorder. Answer and Amended Answer to Petition for Review.

At the hearing, petitioner testified on his own behalf. His remaining evidence was in writing, and included the deposition of Dr. B. McLaughlin and various reports and letters from numerous other doctors.

The law judge concluded that petitioner had not met his burden of proving the Administrator's assessment wrong. In doing so, he noted that Dr. B. McLaughlin had not been familiar with current medical terminology (i.e., the term schizotypal personality disorder having replaced the term borderline schizophrenia), and had not conducted psychological tests, but

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[2] § 67.17, Third-class medical certificate, as pertinent, provides:

> (a) To be eligible for a third-class medical certificate, an applicant must meet the requirements of paragraphs (b) through (f) of this section.
> * * * * * * * * * * *
> (d) Mental and neurologic - (1) Mental. (i) No established medical history or clinical diagnosis of any of the following:
> * * * * * * * * * * *
> (b) a psychosis.
> * * * * * * * * * * *
> (ii) No other personality disorder, neurosis, or mental condition that the Federal Air Surgeon finds -
>
> > (a) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or
> >
> > (b) May reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges.

had relied on the tests of others. The law judge found that, even though the different doctors had varied diagnoses, all their evaluations identified personality traits common to schizotypal personality disorder. Petitioner here contends that the law judge's decision does not reflect the weight of the evidence.

The Administrator seeks amendment of the decision to add certain findings. Specifically, he seeks findings that the Administrator's allegations are supported by a preponderance of the evidence. In the Administrator's view, the addition of these findings as to each regulation is necessary. Otherwise, petitioner allegedly will be able to relitigate the issues through the filing of a new application. Both parties have replied to each other's appeals.

Contrary to petitioner's allegation, and after careful review of the record, we find the law judge's conclusion amply supported by the evidence. We also find that the Administrator has, by a preponderance of the evidence, proven the criteria necessary for findings under subsections (d)(1)(i)(b) and (d)(1)(ii). We discuss the cited FAR sections separately.

1. Subsection (d)(1)(i)(b). This regulation requires only that the psychosis have existed at some time, it does not require that it currently be manifested. See Petition of William A. Bohnen, 1 NTSB 1882 (1972).[3]

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[3]For the reasons behind this principle, see Administrator v. Miller, 46 CAB 970, 972 at n. 5 (1967) ("the hazard to safety in aviation from individuals with histories of psychosis lies in the unpredictability of recurrences of acute phases of these

(continued...)

The record establishes that, in June of 1980, respondent's behavior led him to be involuntarily hospitalized, apparently at his family's request. Although a jury subsequently determined that he was not dangerous and, therefore, need not be committed to a mental institution, his treating physicians (two psychiatrists and one psychologist) diagnosed the incident as a schizophrenic psychosis. Tr. at p. 85 and Exhibit A-3, pps. 72, 81. The Administrator's expert witness agreed petitioner had a psychosis in 1980. Tr. at p. 76.[4] Using letters from doctors who examined him at later times, and follow-up evaluations by Dr. Stidvent (one of the hospital physicians who examined him in 1980), petitioner seeks to prove he did not suffer from a psychosis.

We have stated that medical records can be impeached by showing incorrect diagnosis either by: 1) reversal of the diagnosis by the original physician; or 2) by a contemporaneous diagnosis of another physician to which greater weight can be given. Earl J. Whalen, Petition, 1 NTSB 625 (1969) and 1 NTSB 627 (1969).

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[3](...continued)
disorders"). See also Petition of John Doe, 1 NTSB 64, 65 (1967) ("none of these conditions [e.g., psychosis] can be so precisely studied in the individual as to provide assurance that they will not interfere with the safe piloting of aircraft").

[4]Petitioner's counsel creates a very misleading impression when he states (Appeal at p. 5) that petitioner was released without medication. In fact, the lack of medication was contrary to the hospital's recommendation, and petitioner was found in need of further treatment as well. Tr. at p. 93. Mr. McKnight ignored the hospital's follow-up attempts. Exh. A-3, pps. 83-86.

Because no other evaluations were conducted proximate to June of 1980 (the closest in time being 1985), the later evaluations may not be used to rebut the 1980 diagnosis. Thus, the first avenue of impeachment is unavailable.

Further, we find that Dr. Stidvent's later evaluations (Exh. A-3, pps. 25-31) do not sufficiently reverse his earlier statements so as to eliminate the 1980 diagnosis from Mr. McKnight's medical history. Petitioner relies on Dr. Stidvent's May 12, 1986 letter, which includes the statement:

> Mr. McKnight presented with some inappropriate behavior prior to his hospitalization in July, 1980. At that time his presentation was suggestive of schizophrenia. With history obtained from the family, the diagnosis of chronic schizophrenia was made. In retrospect, the diagnosis of a schizophreniform disorder or an adjustment disorder with mixed disturbance of emotions with other diagnosis to be ruled out, could be made instead.

However, that letter goes on to say that "In my opinion, it would be in his best interests to have psychological testing with projectives to rule out or rule in the possibility of a thought disorder." Thus, even this letter does not establish that Dr. Stidvent later was convinced that his first diagnosis was incorrect. We also note that he does not directly repudiate it, saying only that another diagnosis "could" be made.

Accordingly, neither Dr. Stidvent's later comments nor the fact that certain subsequent evaluations saw petitioner's condition as less severe is sufficient to rebut petitioner's 1980

clinical diagnosis.[5] Having found that, in 1980, petitioner was clinically diagnosed as having a psychosis, the Administrator has met the requirement of subsection (d)(1)(i)(b) that either a medical history or clinical diagnosis be proven, and he has done so by a preponderance of the evidence. With respect to this subsection (d)(1)(i)(b) claim, then, we grant the Administrator's appeal and deny that of petitioner.

2. Subsection 67.17(d)(1)(ii). Denial of a medical certificate under this provision requires that petitioner have a personality disorder, neurosis, or mental condition that makes him unable currently or within 2 years safely to perform aviation tasks. The regulation's language -- personality disorder, neurosis, or mental condition -- is relatively broad. It is not limited in application in this case, as petitioner would seem to suggest, to a requirement that petitioner has a schizotypal personality disorder. Due to our ultimate conclusion, and the proof issue raised by the Administrator's appeal, we discuss this section in two parts.

a. Schizotypal personality disorder. At the hearing, the Administrator's expert witness reviewed petitioner's medical history subsequent to 1980, and concluded that:

> [H]e has an ongoing mental disorder which we call a schizotypal personality or borderline schizophrenia and that that is present and would prevent him from flying safely.

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[5]See Petition of Don E. Byrom, 3 NTSB 2684 (1980), a similar case reaching the same result. Indeed, this case (at p. 2688) also holds that an unsworn letter from the physician who made the earlier diagnosis is not legally sufficient to retract that diagnosis.

Tr. at p. 144.

This witness explained the disorder as a condition:

> of a very fragile ego that can become psychotic and can function in a non-psychotic manner with the symptoms of the thinking disturbances and the tangential thinking, the loose associations . . . . their thinking hangs together very thinly and . . . under pressure, they can fall apart . . . .

Tr. at p. 112.

He discussed various incidents (including a number raised in a letter to the FAA from petitioner's pilot training school, see Exh. A-3, p. 186). He compared the cited behavior to the American Psychological Association's list of characteristics of the disorder (see Exh. A-3 p. 97), to illustrate and confirm this diagnosis.[6] A 1988 formal psychological evaluation by a Dr. D. Lowrance and including a full battery of tests did as well. Exh. A-3, p. 94. This evaluation concluded (p. 96):

> Given the above profile, I have serious reservations concerning his ability to become a commercial pilot. He is in need of psychotherapy and psychopharmacological treatment, I am aware that he is not considering the need for this and will probably not enter treatment.[7]

The Administrator's expert reviewed the test results and

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[6]There is also a note from a flight instructor indicating that petitioner would not follow instructions although, in fairness to petitioner, other instructors indicated that he was a good student, and he received good grades.

[7]In 1985, Dr. Lowrance sent an evaluation letter in connection with petitioner's attempt to join the National Guard. The letter concluded, "Overall, the profile is consistent with a character trait disorder." Exh. A-3 p. 130. In 1989, after a another interview, Dr. Lowrance by letter concluded that there was no evidence of psychosis. However, this letter does not even address questions of lesser personality disorders. Exh. A-3 p. 158. Dr. Lowrance did not recant his 1988 conclusion.

testified that they reflected paranoia, and that the individual would often be suspicious, obsessional, moody, perplexed, and have difficulty thinking and concentrating, and would be stress sensitive. Tr. at pps. 125-126.

Also in 1988, Dr. Stidvent had noted:

> Mr. McKnight will most likely function well in most situations. He has enough obsessive compulsive personality traits in addition to the schizo-typal traits that he can perform well in structured situations in which the expectations of him are well delineated. Problems in his behavior will probably only arise when he is placed in an unpredictable situation and there is significant stress. This concern should be taking [sic] into consideration when deciding whether or not Mr. McKnight should be allowed to act as a pilot in command.

Exh. A-3 at 28.

Petitioner sought to impeach this evidence with the deposition testimony of Dr. B. McLaughlin, as well as letters and reports from him, Dr. M. McLaughlin (no relation), and Dr. C. Timmons. Dr. B. McLaughlin evaluated petitioner at various times beginning in 1985. At that time, he found him "free of any psychiatric illness." Exh. P-16 at p. 13.[8] In 1988, petitioner was examined again by Dr. B. McLaughlin, who then concluded he was suffering from borderline schizophrenia.

Following three examinations in 1989, and review of other evaluations (see infra), Dr. B. McLaughlin has decided that

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[8]We note, however, that a letter Dr. McLaughlin wrote regarding that evaluation appears somewhat inconsistent with such a conclusion: "when I examined him he was in remission and I think he is going to remain such if he is kept under good practical treatment." Exh. A-3, p.41. This language would indicate that Dr. McLaughlin saw a problem and thought it could and should be treated. Petitioner has never undergone therapy or pharmacological treatment.

petitioner had only a compulsive/obsessive behavior disorder, and that it stems from his difficulties with the FAA. Exh. P-13. p. 18. He explains the change in position by the alleged difficulty in examining Mr. McKnight, and suggests that others (Drs. Lowrance and Stidvent) had revised their diagnoses as well.[9]

Petitioner was also evaluated in 1988 by Dr. C. Timmons. After a March 1988 evaluation, he concluded that petitioner had the capacity to perform work and flight responsibilities. He did, however, note that he had obsessive/compulsive features, that "[t]he patient is somewhat vunerable [sic] to the stress and may be overwhelmed at times," that "[u]nder stress, the patient's ability to organize information may be limited to some degree," and that there was some insistance [sic] that others submit to his way of doing things. Exh. P-11, pps. 2 and 3. A September 1988 report indicated certain improvements, but stated:

> The patient appeared to be limited in his insight and judgement. He [sic] ability to learn from environmental feedback may therefore be limited. . . . Throughout the interview, the patient demonstrated limited ability to assimilate feedback. He was rather guarded and defensive in response to feedback.

Exh. P-10.[10]

Dr. M. McLaughlin also conducted a psychological evaluation in October of 1988. His conclusion was no "diagnosable

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[9]As noted, we disagree.

[10]A third letter dated in June of 1989 is of little import, as it states that it does not offer clinical impressions or judgement nor is it for the purpose of determining past or present personality functioning.

psychiatric illness." He identified obsessive/compulsive traits, but found them of a degree that would not interfere with performance as a pilot.

On balance, we must agree with the law judge that the record supports finding that petitioner has not met his burden of proving that he does not have schizotypal personality disorder. The Administrator's witness offered compelling analysis, based on all the medical records, that petitioner's evidence is insufficient to overcome. As noted by the law judge, the behavior patterns identified over time by numerous doctors are consistent with such a diagnosis. Moreover, Drs. Stidvent and Lorance's later comments are not inconsistent with it and, we think, are given too great weight by Dr. B. McLaughlin.

Accordingly, we find that the Administrator's position is supported by a preponderance of the evidence. Nevertheless, as next discussed, even had we found that petitioner had proven that he did not suffer from schizotypal personality disorder, we would still find that the Administrator's claim under subsection (d)(1)(ii) was supported by a preponderance of the evidence.

b. Other personality disorder, neurosis, or mental condition. As noted, the regulation's language -- personality disorder, neurosis, or mental condition -- is broad and obviously includes more than schizotypal personality disorder or some other named personality disorder. There seems to be no dispute that petitioner has particular traits (e.g., obsessive/compulsive behavior) that can fairly be termed part of his mental condition,

whether or not they are termed personality disorders, mental condition, or neurosis. Although the various evaluations reflect different terminology and extent of concern, they almost universally suggest that petitioner suffers from some degree of mental disorder cognizable under this section if it:

> (a) makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or (b) may reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges.

Regardless of what petitioner's symptoms might be called, the weight of the evidence supports findings that he is not suited to the rigors and special stresses of piloting, and that as a pilot he could prove a danger to aviation safety.[11] Even Dr. B. McLaughlin's evidence does not convince us otherwise.[12] We note that the Administrator's expert witness is the only one demonstrated on the record to be sufficiently knowledgeable regarding medicine and aviation to analyze petitioner's condition in connection with the situations in which he will be placed as a pilot. He categorically found that petitioner could pose a threat to aviation safety currently and for the next 2 years.

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[11]Notably, his difficulty in processing environmental feedback and disinclination to accept direction could prove especially dangerous, as would his apparent tendency to deal poorly under stress.

[12]We note that his Exh. P-3 letter indicates that petitioner had "some small variations of personality, which are common in all individuals of this type." (Emphasis added.) We question how Dr. McLaughlin could find petitioner free of any psychiatric illness while, at the same time, using the above language. His September 1989 letter (Exh. P-2) states that petitioner "suffers from a behavioral disturbance."

Tr. at pps. 144-146. Having read the extensive medical record, we cannot conclude otherwise; the subsection (d)(1)(ii) criteria have been established by a preponderance of the evidence.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted; and

2. Petitioner's appeal is denied.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.